

Summary
Water Pollution Control Board
Indiana Government Center South
Conference Center Room A
Indianapolis, Indiana
Wednesday, December 12, 2007

1. CALL TO ORDER

Chairman Gary Powdrill called the meeting to order at 1:30 p.m. A quorum was present.

Members present: Gary Powdrill (Chairperson); Jim Flannery; Mark Legan; Ken Hedge; Dave Wagner; Lee Botts; Ted Alexander; Brandon Seitz (proxy for Becky Skillman, Lt. Governor); Howard Cundiff (proxy for Dr. Judith A. Monroe, IDOH); Pam Fisher (proxy for Nathan J. Feltman, Sec. of IEDC); and Deborah Albright (board counsel).

Present for IDEM: Thomas Easterly, IDEM Commissioner; Bruno Pigott, Assistant Commissioner, Office of Water Quality (OWQ); Martha Clark Mettler, Deputy Assistant Commissioner, OWQ; Nancy King, Attorney, Rules and Legislative Section, Office of Legal Council (OLC), John Nixon, Attorney, Rules and Legislative Section, OLC; and Jody Arthur, 305(b) & 303(d) Coordinator, Watershed Planning Branch, OWQ.

2. INTRODUCTION OF BOARD MEMBERS

Chairman Powdrill had board members to introduce themselves and their affiliations.

3. APPROVAL OF SUMMARY

Chairman Powdrill called for the approval of the November 14, 2007, board summary. A motion was made and seconded to approve the November 14, 2007, board summary.

4. REPORTS

Mr. Bruno Pigott provided briefings on agency rulemakings: (1) Sewer Bans went to Attorney General's office on Dec. 11, 2007; (2) CAFO is waiting on Federal dates to be in place, afterwards it moves to Attorney General's office; (3) Sulfate is expected to come before the board for preliminary adoption next month; (4) Arsenic will continue to be worked on by internal staff in order to draft a nonrule policy document (NPD) as promised to the board; (5) Antidegradation group of stakeholders met with Ms. Martha Clark Mettler to develop plans for drafting language for a re-second notice; (6) Pretreatment Streamlining is being redrafted for a second notice; (7) Chloride Variance will be ready for a second notice in January or February 2008; (8) Drinking Water Standards water staff section is looking at rule language thus it might be noticed at the beginning of 2008; (9) Sunset Readoption issues will be discussed later in the meeting; (10) 303(d) Listing of Impaired Water update will have Ms. Jody Arthur addressing the board's requests that were made at the Nov. 14th meeting, later in meeting; (11) NPDs for Existing Use Concept-014, CSO related bypass and LTCPS-015, and CSO Treatment Facilities-016 will be presented to board in February 2008; and (12) Sewer Bans NPD still has internal staff working on a draft that would give IDEM more authority and be put into a template.

Mr. Pigott updated the board by using permit charts to show the progress of the National Pollutant Discharge Elimination System (NPDES) permitting backlog. He elaborated about the agency working with EPA to complete a few of its major permits.

A. Ms. Jody Arthur discussed a couple of questions that was raised by board members at the

Nov. 14, 2007, meeting. Ms. Arthur indicated that she would note the differences between the PCB classes into a footnote in the 303(d) list.

Board members questioned Ms. Arthur on issues pertaining to the updated graphs.

- B.** Commissioner Easterly presented a PowerPoint presentation summarizing the report by Dr. A. James Barnes, Professor of Public and Environmental Affairs and Adjunct Professor of Law, on the British Petroleum (BP) Whiting Refinery NPDES permit.

Mr. Jim Flannery commented that he thinks the Barnes Report should be required reading. While Ms. Botts agreed with Mr. Flannery, she thought that the Barnes Report called for a need of clarity on addressing the state's antidegradation issues.

- C.** Thereafter, Commissioner Easterly discussed with the board his memorandum to Chairman Powdrill, "Sunset Rules to Expire, 327 IAC 11-1 and 327 IAC 11-2 State Environmental Policy." Commissioner Easterly conveyed why he thought the sunset rules were inadequate and why they should be allowed to sunset.

Ms. King explained to the board that it has the ability to ask the Governor to extend the sunset rule as an emergency rule for 1 year to allow time to start a new rulemaking.

Ms. Deborah Albright, board counsel, spoke about the legality of allowing the rule to sunset thus leaving the state without a rule. Mr. Dave Wagner agreed with Ms. Albright, but he also assured the board that there would be many interested parties willing to help develop amendments to the Article 11.

Following a lengthy discussion, the board moved to have Commissioner Easterly ask the Governor for a 1 year extension on the sunset rules, 327 IAC 11-1 and 327 IAC 11-2, for both the Office of Air and Office of Water and concurrently, to have the agency to start a rulemaking that would amend Article 11.

5. RULE ACTION

#06-573 *E.coli* Single Sample Maximum

Chairman Powdrill continued the Nov. 14, 2007 WPCB public hearing for consideration of final adoption of *E.coli* single sample maximum proposed rules. Mr. Pigott spoke for the agency.

There were no commenters. The public hearing concluded.

Following a brief board discussion, a motion was made and seconded to adopt IDEM's suggested changes to the proposed rules as preliminary adopted. With a unanimously roll call vote, the board voted to final adopt the *E.coli* Single Sample Maximum proposed rules as amended.

#06-179 Wastewater Operator Certification

Chairman Powdrill opened the public hearing for consideration of final adoption of the wastewater operator certification proposed rules.

There were no commenters. The public hearing concluded.

A motion was made and seconded to adopt the proposed rules. With a roll call vote, the board unanimously voted to final adopt the Wastewater Operator Certification proposed rules.

6. OTHER MATTERS

Mr. Ted Alexander asked about the 2008 water board meetings being held in conference room 32 and wanted to know if the board was aware of a couple of the water board meetings conflicting with the Office of Air's board meetings.

Mr. Jim Flannery mentioned SB43 for EQSC on Sunset statute revision and asked if the board could form a resolution of similar type to help expedite its legislative process. Ms. Albright suggested to the board to compose an individual statement supporting the need for a new Sunset statute.

Mr. Bill Beranak suggested that it would take more than a statement of support to clarify the need of another Sunset statute; therefore, he recommended the board wait until the 2008 Legislative Session begins.

7. OPEN FORUM

Mr. Bowden Quinn, Conservation Program Coordinator, Hoosier Chapter of the Sierra Club, commented on the Sunset, Article 11 rule. He supported the board's decision to ask the Governor to extend the Sunset rules; however, he expressed concerns about IDEM having too much on its plate.

Ms. Botts requested IDEM to provide the board with a status report on antidegradation rulemaking along with a timeline for having it completed.

Chairman Powdrill commented about a NIRPC meeting where Ms. Hala Kuss gave a PowerPoint presentation on the permitting process. He suggested that IDEM have Ms. Kuss's presentation on the next water board agenda to help people better understand the permitting process.

8. ADJOURNMENT

Thereafter, Chairperson Powdrill adjourned the WPCB meeting at 3:27 p.m.

The next WPCB meeting is scheduled for Wednesday, January 9, 2008, Indiana Government Center South, Conference Room 32 at 1:30 p.m. E.S.T.

CHAIRPERSON

A court reporter recorded this meeting. A typewritten transcript of the entire meeting is on file in the Office of Water Quality, Indiana Department of Environmental Management.